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and Other Cruel, Inhuman
or Degrading Treatment
or Punishment

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COMMITTEE AGAINST TORTURE
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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Conclusions and recommendations of the Committee against Torture

RUSSIAN FEDERATION

1. The Committee considered the third periodic report of the Russian Federation (CAT/C/34/Add.15) at its 520th, 523rd and 526th meetings, held on 13, 14 and 16 May 2002 (CAT/C/SR.520, 523 and 526), and adopted the following conclusions and recommendations.

A. Introduction

2. The Committee welcomes the third periodic report of the Russian Federation, which was submitted with a delay. The report responds directly to some of the concerns and recommendations expressed by the Committee in its conclusions adopted in 1996. The Committee regrets that despite the State party's assurances that it would promptly provide the Committee with the additional information requested in the review, such materials have not been received. The Committee appreciates the updated and detailed information as well as the extensive responses provided by the representatives of the State party in the oral update and reply. The Committee notes, however, that, because of a lack of time, many of the questions asked by the Committee in the review of the third periodic report remained unanswered.

B. Positive aspects

3. The Committee notes the following positive developments:

(a) The ratification of the European Convention for the Protection of Human Rights and Fundamental Freedoms and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;

(b) The introduction of a new Criminal Code and a new Code of Criminal Procedure, as well as the State party's assurances that all of the latter Code will enter into force on 1 July 2002. The Committee welcomes the introduction in the Code of Criminal Procedure of, inter alia, jury trials, stricter limits on detention and interrogation, provisions for exclusion of evidence obtained in the absence of a defence lawyer, and the conferral authority of a judge rather than a procurator to order an arrest;

(c) Transfer of the penal correction system from the authority of the Ministry of Internal Affairs to the authority of the Ministry of Justice;

(d) Measures introduced to improve conditions of detention in prisons and to reduce overcrowding;

(e) Assurances by the representative of the State party that alternative service, and a "voluntary military on a contract basis" would be introduced to replace mandatory conscription into the armed forces;

(f) The Procurator General's Order No. 46, which requires the presence of representatives of the Prosecutor's Office during "special operations" carried out in Chechnya, and Order No. 80 of the Commander of the Federal Forces of the North Caucasus, requiring troops to identify themselves, record detentions, notify relatives, and take other measures to safeguard civilians from abuse;

(g) The setting up of a special working group within the Ministry of Internal Affairs with a mandate to bring national legislation into conformity with international refugee law.

C. Factors and difficulties

4. The Committee appreciates the frank explanations provided by the delegation regarding the difficulties still faced by the State party in overcoming the inheritance of a system characterized by "arbitrariness and impunity" and in building and strengthening democratic institutions and the rule of law. It notes that these challenges are compounded by "acts of terrorism" and threats to security. Nonetheless, the Committee reiterates that, in accordance with article 2 of the Convention, "no exceptional circumstance whatsoever … may be invoked as a justification of torture".

D. Subjects of concern

5. The Committee is deeply concerned over the following:

(a) Numerous and consistent allegations of widespread torture and other cruel, inhuman or degrading treatment or punishment of detainees committed by law enforcement personnel, commonly with a view to obtaining confessions;

(b) Continuing reports, despite the State party's considerable efforts to initiate dialogue and preventive safeguards such as a "hotline" for victims, of widespread "hazing" (*dedovshchina*) in the military, as well as torture and other cruel, inhuman or degrading treatment or punishment in the armed forces, conducted by or with the consent or approval of officers, resulting in severe physical and mental harm to the victims;

(c) A persistent pattern of impunity for torture and other ill-treatment benefiting both civil and military officials, a lack of reported decisions by judges to dismiss or return a case for further investigation citing the use of torture to obtain a confession, and the very small number of persons convicted of violations of the Convention.

6. The Committee also expresses its concern about the following:

(a) The failure to define torture in domestic law in conformity with article 1 of the Convention. The designation of torture as an aggravating circumstance for some enumerated crimes does not satisfy the requirements of articles 1 and 4 of the Convention;

(b) The numerous cases of convictions based on confessions and the law enforcement promotion system based on the percentage of crimes solved, which, taken together, reportedly create conditions that promote the use of torture and ill-treatment to force detainees to "confess";

(c) The lack of adequate access for persons deprived of liberty, immediately after they are apprehended, to counsel, doctor and family members, an all-important safeguard against torture;

(d) The de facto refusal of judges to take account of evidence of torture and ill-treatment provided by the accused, resulting in the common failure to either investigate or prosecute such cases;

(e) The explanation by the State party that, despite numerous allegations of violence against women in custody, no formal complaint has been received on this issue. Despite the State party's efforts to release prisoners and reduce their number in general, the population of women in custody has doubled in the past decade;

(f) The lack of practical training about obligations under the Convention for doctors, law enforcement personnel and judges, and the military;

(g) Distressing conditions of pre-trial detention, including the prevalence of tuberculosis and other diseases, as well as the poor and unsupervised conditions of detention in IVS (temporary police detention), and SIZOs (pre-trial establishment) facilities, including the practice of placing metal shutters in front of cell windows, preventing natural light and ventilation in the cells, reportedly because, by law, inmates are prohibited from communicating with one another;

(h) The insufficient level of independence and effectiveness of the Procuracy, due, as recognized by the State party, to the problems posed by the dual responsibility of the Procuracy for prosecution and oversight of the proper conduct of investigations;

(i) Reports of conditions amounting to inhuman or degrading treatment of children in institutions or places of detention;

(j) A lack of safeguards to ensure that persons are not returned to countries where they face a real risk of torture (non-refoulement).

7. In connection with the events in Chechnya, the Committee is particularly concerned over the following:

(a) Numerous and ongoing reports of severe violations of human rights and the Convention, including arbitrary detention, torture and ill-treatment, including forced confessions, extrajudicial killings and forced disappearances, particularly during "special operations" or "sweeps", and the creation of illegal temporary detention centres, including "filtration camps". Allegations of brutal sexual violence are unusually common. Additionally, armed units which are reported to be very brutal towards civilians have been sent again into the conflict area;

(b) Numerous armed units and forces operating under the authority of various departments and services in Chechnya, which hinders the identification of the personnel responsible for the reported abusive actions cited above;

(c) A lack of effective implementation of Orders Nos. 46 and 80, as referred to above among the positive aspects;

(d) The dual system of jurisdiction in Chechnya involving both military and civilian prosecutors and courts, which leads to long and unacceptable delays in registering cases, resulting in a cyclical process whereby case information and the responsibility for opening investigations continue to be passed from one official to another and back, without resulting in the initiation of prosecutions. The Committee notes with concern that it is impossible for the civil prosecutor to question military personnel and carry out investigations at military sites in order to collect the evidence required to oblige the military prosecutor's office to take up the case. Also of concern is the insufficient independence of military courts, prosecutors and judges, with the result that few cases are registered to prosecute officials alleged to be responsible for the abuses.

E. Recommendations

8. The Committee recommends that the State party:

(a) Promptly incorporate into domestic law the definition of torture as contained in article 1 of the Convention and characterize torture and other cruel, inhuman and degrading treatment as specific crimes with appropriate penalties in domestic law;

(b) Adopt measures to permit detainees access to a lawyer, doctor and family members from the time they are taken into custody; inform suspects and witnesses of their rights at the beginning of detention; and ensure that legal assistance and a doctor will be provided at the request of detained persons rather than solely when permitted by officials. Urgent consideration should be given to making a medical examination compulsory for persons when they enter IVS and SIZOs, and to the establishment of a health service independent from the Ministries of Internal Affairs and Justice to conduct such examinations;

(c) Ensure in practice absolute respect for the principle of the inadmissibility of evidence obtained by torture and review cases of convictions based solely on confessions, recognizing that many of them may have been obtained through torture or ill-treatment, and, as appropriate, provide compensation to and release persons presenting credible evidence of having been tortured or ill-treated;

(d) Improve conditions in prisons and pre-trial detention centres so that they are in conformity with the requirements of the Convention. The State party should ensure, in particular, that the prohibition of communication between inmates in pre-trial detention is not imposed on all inmates without distinction, but limited to identified inmates, when necessary and on the basis of a court decision setting a time limit for such conditions of detention;

(e) Establish a programme of unannounced inspections of pre-trial detention centres and other places of confinement, by credible impartial investigators, whose findings should be made public;

(f) Consider the creation of an independent body to inspect prisons, monitor all forms of violence in custody, including sexual violence against both men and women, and all forms of inter-prisoner violence, including proxy violence with the acquiescence of officials. The participation of public defenders in the investigation stage following detention would offer a safeguard for detainees;

(g) Ensure training about obligations under the Convention for (i) doctors to detect signs of torture or ill-treatment of persons who have been or are in custody; (ii) law enforcement personnel and judges to initiate prompt and impartial investigations; and (iii) military personnel to be aware of the prohibition of torture and that an order from a superior officer may not be invoked as a justification of torture;

(h) Request the Supreme Court to analyse the existing practices of the admissibility of cases of torture in the courts, in light of the definition of torture provided in article 1 of the Convention, and consider issuing guidelines on this matter;

(i) Ensure prompt, impartial and full investigations into the many allegations of torture reported to the authorities and the prosecution and punishment, as appropriate, of perpetrators, as well as the protection of persons who complain of torture and their witnesses from retaliation;

(j) Distribute and ensure implementation of appropriate instructions to all relevant officials on the prohibition of ill-treatment and acts of torture against children in institutions and prisons under the jurisdiction of the State;

(k) Ensure that no person is expelled, returned or extradited to a country where there are substantial grounds for believing that he/she would be in danger of being subjected to torture.

9. With regard to the situation in Chechnya, the Committee also recommends that the State party:

(a) Clarify the jurisdiction over the events in Chechnya, which currently have an uncertain status, as there is no state of exception and there is also a non-international armed conflict in progress. Such clarification could provide individuals with an effective means of seeking redress for any violations committed, so they will not be caught in a vicious circle of various military and civilian departments and agencies with differing degrees of responsibility;

(b) While a number of mechanisms have been put in place in Chechnya in connection with allegations of human rights violations, none has possessed the attributes associated with an independent impartial investigating body. Accordingly, the Committee reiterates its 1996 conclusion calling upon the Government of the State party to establish a credible impartial and "independent committee to investigate allegations of breaches of the Convention by the military forces of the Russian Federation and Chechen separatists, with a view to bringing to justice those against whom there is evidence that establishes their involvement or complicity in such acts" (A/52/44, para. 43 (h));

(c) Ensure the effective implementation of Orders Nos. 46 and 80 and elaborate comprehensive guidelines on the conduct of sweep operations;

(d) Strengthen the powers of the Special Representative of the President for human and civil rights and freedoms in Chechnya to conduct investigations and make recommendations to the prosecutor as to possible criminal cases;

(e) Take steps to ensure civilian control over the army and ensure, in practice, that hazing, torture and ill-treatment are prohibited in the military, among conscripts and officers;

(f) Consider the formation of a joint investigative group of both military and civilian procuracy officials until specific responsibility can be identified and jurisdiction can be established.

10. The Committee further recommends that the State party:

(a) Provide requested data to the Committee, including information disaggregated, inter alia, by age, gender, ethnicity and geography, on civil, military and other places of detention as well as on juvenile detention centres and other relevant institutions; and provide information in the next periodic report regarding the number, types and results of cases of punishment of police and other law enforcement personnel for torture and related offences, including those rejected by the court;

(b) Widely disseminate the conclusions and recommendations of the Committee and the summary records of the review, in appropriate languages, in the country; and consider consulting with independent human rights, civil liberties and legal aid organizations and public defenders groups in the preparation of the next report.